Responsiveness Summary

For

Public Comments Received

On the

NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

SPDES MULTI-SECTOR GENERAL PERMIT
FOR STORMWATER DISCHARGES
ASSOCIATED WITH

INDUSTRIAL ACTIVITY

Permit No. GP-0-17-004

Issued Pursuant to Article 17, Titles 7, 8 and Article 70
of the Environmental Conservation Law

March 2018

Background

The Clean Water Act (CWA) requires that stormwater discharges associated with industrial activity from a point source to waters of the United States are unlawful, unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit. In New York, EPA has approved the State program which is enacted through the administration of the State Pollutant Discharge Elimination System (SPDES) program.

The SPDES Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activity, GP-0-17-004 (final MSGP), issued pursuant to Article 17, Titles 7, 8 and Article 70 of the ECL, replaces SPDES MSGP for Stormwater Discharges Associated with Industrial Activity, GP-0-12-001. The final MSGP becomes effective March 1, 2018. An owner or operator may obtain coverage under this final MSGP by submitting a Notice of Intent ("NOI") to the Department. Owners or operators wishing to continue coverage from GP-0-12-001 must update their facility's Stormwater Pollution Prevention Plan (SWPPP) and submit a complete NOI within 90 days of the effective date of the permit.

Introduction

The New York State Department of Environmental Conservation (Department) has prepared this responsiveness summary to address all comments received on both the first draft and the revised draft SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, GP-0-17-004.

The draft MSGP was first made available for public review and comment commencing on March 31, 2017. Additional changes were made to the first draft permit to improve organization and readability and a revised draft was publicly noticed commencing on July 12, 2017.

The comments have been organized to follow the format of the final MSGP with general comments addressed at the end of the responsiveness summary. Comments that were received regarding editorial and formatting changes, were addressed where appropriate. Frequently raised issues are summarized and presented as one set of comments. A list of commenters is included at the end of the document with commenter(s) referenced at the end of each comment.

Part I – Coverage under this Permit

Eligibility

Comment 1-1 - Part I.B.2

Provide a definition of “pavement wash waters” and include an exemption for water used for dust suppression from the definition. (NYCMA)

Response 1.1

The final MSGP (Part I.B.2) authorizes certain non-stormwater discharges as listed in 6 NYCRR 750-1.2(29)(vi) and includes a definition of *Discharges Authorized by a SPDES permit* which clarifies “pavement wash waters.” Pavement wash waters are allowable non-stormwater discharges provided that areas where spills or leaks of toxic or hazardous materials, other than minor and routine releases from motor vehicles, have not occurred (unless such material has been removed) and where detergents are not used. The final MSGP does not include an exemption for dust suppression water as suggested. Discharges of clean water applied to roadways for dust control is authorized under the final MSGP provided that BMPs are in place to limit application rates to prevent erosion and minimize surface runoff

Comment 1-2 - Part I.B.1

The eligibility criteria language under the *Stormwater Discharges Authorized* part is confusing and needs clarification - “*Stormwater discharges from other sources, whether covered by another SPDES permit or not, when combined with authorized stormwater discharges under this permit;"* (WACAP)

Response 1-2

Changes were made and the final MSGP reverted to the original language in GP-0-12-001. Stormwater discharges associated with industrial activity which are authorized by the final MSGP permit may be combined with other sources of stormwater which are not classified as associated with industrial activity pursuant to 40 CFR 122.26(b)(14), provided that the combined discharge is in compliance with the final MSGP and has not been designated by the Department as requiring an individual SPDES Permit.

Comment 1-3 - Part I B.1.b Stormwater Discharges Authorized

EPA suggests that NYSDEC reference the permit page number on which Table IV.3 appears for ease of reference. (EPA Region 2)

Response 1-3

Changes were made and the final MSGP references Part IV.F.3.e rather than the table number for ease of reference.

Ineligible Activities

Comment 1-4 - Discharges into Class AA-Special and N waters

The Draft Permit authorizes discharges into Class AA-Special and N waters in violation of 6 NYCRR § 701 and New York's anti-degradation policy. DEC must amend the Draft MSGP to prohibit all discharges of stormwater associated with industrial activity into Class AA-Special and N waters.

Federal regulations require New York State to establish an antidegradation policy that applies, at minimum, a three-tier approach to protecting water quality. *See* 40 C.F.R. § 131.12. New York created an antidegradation policy in 1985. *See* NYSDEC Organization and Delegation Memorandum No. 85-40 Water Quality Antidegradation Policy (Sept. 9, 1985) ("Antidegradation Policy"). New York implements Tier 3 protection through, *inter alia*, "a series of general and special laws" that include absolute prohibitions on the discharge of pollutants to streams classified by the state as "AA Special" or "N" waters. Antidegradation Policy at 2.

Specifically, with respect to Class N waters, as described in the state's antidegradation policy, DEC's regulations at 6 NYCRR § 701.2 provide the following pair of categorical prohibitions:

> (b) There shall be no discharge of sewage, industrial wastes, or other wastes, waste effluents or any sewage effluents not having had filtration resulting from at least 200 feet of lateral travel through unconsolidated earth.
>
> (c) These waters shall contain no deleterious substances, hydrocarbons or substances that would contribute to eutrophication, nor shall they receive surface runoff containing any such substance.

Similarly, DEC's regulations also categorically prohibit the discharge of pollution into Class-AA Special waters. The standards for Class-AA Special waters, set forth at 6 NYCRR § 701.3 state:

> (b) These waters shall contain no floating solids, settleable solids, oil, sludge deposits, toxic wastes, deleterious substances, colored or other wastes or heated liquids attributable to sewage, industrial wastes or other wastes."
>
> (c) There shall be no discharge or disposal of sewage, industrial wastes or other wastes into these waters." 6 NYCRR § 701.3(c).

The Draft Permit does not explicitly prohibit discharges that do not comply with New York's antidegradation policy and 6 NYCRR Part 701. Troublingly, the Draft Permit does not even refer to New York's antidegradation policy or these categorical prohibitions at all. It simply provides permit applicants with blanket authorization to automatically begin discharging stormwater associated with industrial activity to any surface waters of the State thirty days after submitting a

NOI, so long as the applicant has met the Draft Permit's other eligibility requirements. *See* Draft MSGP Part I.C.2.

There is no prohibition in the Draft Permit on the discharge of stormwater associated with industrial activity to AA-Special and N waters. The Draft Permit does not establish a process for ensuring that water quality in Tier 3 waters will be protected unconditionally. The Draft MSGP, thus, violates 40 C.F.R. § 131.12, 6 NYCRR § 701, and New York's antidegradation policy by authorizing discharges into class AA-Special and N waters. DEC should consider including the following section in Part I.B of the Permit:

B. Activities Which are Ineligible for Coverage under this General Permit …

9. **Discharges to waters designated as AA-Special and N waters.** No SPDES permit coverage of any kind is available to an owner or operator of a discharge to AA-Special and N waters, as per 6 NYCRR § 701. Any such discharge is a violation of the Environmental Conservation Law. (Super Law Group)

Response 1-4

The suggested changes were not made. Compliance with the terms and conditions of the MSGP is expected to be protective of water quality (See also Response to comment 2-8) and will not result in degradation of classified waters.

All waters in New York State are assigned a letter classification that denotes their best uses. Letter classes such as AA, AA-S, A, B, C, D and N are assigned to fresh surface waters, and SA, SB, SC, I, and SD to saline (marine) surface waters. Best uses include: source of drinking water, swimming, boating, fishing, and shell fishing. New York does not classify waters using EPA's tiered approach and has not designated any Outstanding National Resource waters that would otherwise be considered a Tier 3 water. As such, the MSGP does not need to establish a process for ensuring Tier 3 waters will be protected unconditionally as suggested.

Water quality is protected against degradation through implementation of the Department's Water Quality Anti-Degradation Policy (Organization and Delegation Memorandum 85-40, September 9, 1985) ("anti-degradation policy") which was developed and approved by EPA as required by 40 § CFR 131.21. The EPA-approved anti-degradation policy is implemented through a series of general and special laws and other on-going regulatory activities, such as the State Pollutant Discharge Elimination System (SPDES) permit process, the classification of waters and the State Environmental Quality Review Act (SEQRA).

Inclusion of a specific prohibition for Class AA-S or N waters as suggested is not necessary. While the Environmental Conservation Law and state regulations (6 NYCRR Part 701), do prohibit certain discharges into stream classifications AA-

Special and N, the MSGP does not authorize these discharges. These prohibitions apply to sewage, industrial wastes or other wastes that might reasonably be expected to contravene the state adopted water quality standards. However, stormwater discharges are not "sewage, industrial wastes or other wastes" and the MSGP does not authorize their discharge or any other "deleterious substances, hydrocarbons or substances that would contribute to eutrophication or surface runoff containing any such substance"" or "floating solids, settleable solids, oil, sludge deposits, toxic wastes, deleterious substances, colored or other wastes or heated liquids attributable to sewage, industrial waste or other wastes." These are non-stormwater discharges not expressly authorized under Part I.B.2 of the final MSGP. Stormwater discharges mixed with these non-stormwater sources are not authorized and must be eliminated per Part II.A.9 of the final MSGP. In addition, the final MSGP (Part II.C.1) prohibits any discharge which contains a visible sheen, foam, or odor, or may cause or contribute to a violation of water quality standards.

Under the anti-degradation policy, protection against degradation due to stormwater discharges associated with industrial activity are provided by the SEQR and/ or SPDES permit processes as follows:

SEQR process: Environmental factors are considered in the early stages of project planning through the SEQR process. If through this process it is determined that a proposed action may have a significant effect on the environment. then a draft Environmental Impact Statement (EIS) is prepared to explore ways to minimize adverse environmental effects or identify a potentially less damaging environmental alternative. This could involve the imposition of more stringent or different types of permit conditions. A SEQR analysis was completed on the final MSGP itself. In addition, the final MSGP requires all eligible facilities to first satisfy SEQR prior to submission of a Notice of Intent for coverage. If the SEQR process indicates more stringent or different types of conditions beyond that offered by the final MSGP are necessary to mitigate impacts, an owner/operator would not be eligible for coverage under the final MSGP and would need to apply for an individual permit.

SPDES Permitting program: As noted in the Department's anti-degradation policy, water quality based effluent limitations derived for SPDES permits provide for the protection and maintenance of attained higher uses above those included in standards currently assigned to waters receiving the effluent discharge. Variations in numerical water quality criteria that are not significant and do not interfere with the attained higher use are permitted.

Stormwater discharges from industrial activities authorized and in compliance with the final MSGP will not result in significant variations from water quality criteria. Such discharges are subject to all of the best management practice

requirements of the permit, by their nature are dilute stormwater discharges, and occur during wet weather when stream flows are higher.

The Department expects that compliance with the terms and conditions of the MSGP will control discharges necessary to meet applicable water quality standards (See also Response to comment 2-9). The final MSGP requires compliance with water quality standards, and therefore, is in compliance with ECL §17-0501. If there is evidence indicating that the stormwater discharges authorized by the final MSGP are causing or are contributing to an excursion above an applicable water quality standard, the MSGP requires that the owner or operator must take appropriate corrective action and notify the Department of the corrective actions taken. The Department may require the owner or operator to provide additional information, include and implement appropriate controls in the SWPPP to correct the problem, may require the owner/or operator to obtain an individual permit, and/or may take appropriate enforcement action.
Pursuant to 6 NYCRR 750-1.21(e), the Department may also require any discharger authorized to discharge in accordance with a general permit to apply for and obtain an individual SPDES permit or apply for authorization to discharge in accordance with another general permit.

Comment 1-5 - Part I.C

NYSDEC removed the cite found in the NYSDEC 2012 MSGP [stating "Discharges from industrial activity that have the potential to adversely affect a property that is listed or is eligible for listing on the State or National Registers of Historic Places (Note: includes archeological sites), unless there are written agreements in place with the NYS Office of Parks, Recreation and Historic Preservation (OPRHP) or other governmental agencies to mitigate the effects, or there are local land use approvals evidencing the same."] This language should be added to the 2017 draft MSGP Part I C "Activities which are Ineligible for Coverage under this General Permit" to avoid backsliding. (EPA Region 2)

Response 1-5

The suggested change is not necessary, as the same level of protection is still required through other mechanisms. As part of the issuance of the final MSGP, the Department consulted with the Office of Parks, Recreation & Historic Preservation (OPRHP), who concluded that undertakings requiring coverage under the final MSGP will have no impact on archaeological and/or historical resources listed in or eligible for the New York State and National Registers of Historic Places and further review under the State Historic Preservation Act (SHPA) is not required for facilities seeking coverage under the final MSGP. A letter of "no impact" from OPRHP documenting the consultation is available for review.

The final MSGP is applicable to stormwater discharges associated with the operation of industrial facilities. Except for mines and landfills, construction of

new or expanded facilities disturbing one or more acres of soil would require an individual SPDES permit or coverage under the SPDES General Permit for Stormwater Discharges from Construction Activities (GP-0-15-002) and SHPA will be addressed through those permits. Soil disturbance associated with Mineral Mining and Dressing (Sector J) and Landfills, Land Application Sites and Non-Compliant Landfills (Sector L) authorized under the final MSGP do not require separate authorization under GP-0-15-002 but receive a full SHPA review in the context of other permits issued by the Department under other New York State laws related to those specific operations.

Terminating Coverage

Comment 1-6 - Part I E.4

Does the language on terminating coverage intend to be analogous with the federal language found at EPA 2015 MSGP Section 1.3.3 Bullet #4 stating that a Notice of Termination (NOT) is required when "You obtained coverage under an individual or alternative general permit for all discharges required to be covered by an NPDES permit."? If not, add a requirement such as the one found in EPA's 2015 MSGP Section 1.3.3 Bullet #4. (EPA Region 2)

Response 1-6

No changes were made as the language in Part I.E.4 of the final MSGP is analogous to EPA's 2015 MSGP.

Part II - Effluent Limitations

Minimize Exposure

Comment 2-1 - Part II A.1

Change "…so that leaks are contained…" to "…so that leaks and spills are contained…" (EPA Region 2)

Response 2-1

The final MSGP (Part II.A.1) was updated to include the suggested change.

Good Housekeeping

Comment 2-2 - Part II A.2

Include the restriction of "dry weather discharges" from dumpsters as per the language in the EPA 2015 MSGP Section 2.1.2.2 Bullet #3. (EPA Region 2)

Response 2-2

Dry weather discharges from dumpsters are considered to be a non-stormwater discharge not authorized by the final MSGP (Part I.C.1). This restriction includes all non-stormwater discharges not expressly authorized and not just 'dry weather discharges'. Therefore, no changes were made.

Comment 2-3 - Part II.A.2

The requirement for secondary containment and treatment of water from roll off boxes and dumpsters is impractical. Dumpsters and roll-offs are not owned by the facilities that use them and this requirement would make the facility responsible for material that may be in the dumpster when it is delivered. Also, by design, roll offs do not have covers. To cover a roll off would make it difficult and inefficient to use and the cover would have to be removed prior to transporting it offsite. In addition, what data show that runoff from dumpsters is a source of pollution at industrial facilities? (NYCMA)

Response 2-3

Uncovered dumpsters and roll offs allow stormwater to contact waste material. Leaks from these containers have the potential for pollutants from contact with waste material. The final MSGP does not dictate the use of secondary containment and treatment but rather requires control measures that are technologically available and economically practicable to prevent the discharge of such pollutants. Secondary containment and/or treatment were used as examples of control measures that could be selected for dumpsters or roll off boxes that could not be covered. The MSGP provides the owner/operator with the flexibility to select other control measures provided they are effectively controlling pollutants as demonstrated through dry weather inspections and other monitoring provisions of the final MSGP.

Maintenance

Comment 2-4 - Part II.A.3.a.(3)

The draft MSGP includes a requirement for inspecting and maintaining baghouses at least quarterly. Not all baghouses are the same nor do they all require the same inspection and maintenance schedules. Baghouses should be maintained as necessary and per manufacturer's recommendations to prevent pollutants being discharged. Many industries that use baghouses are seasonal and Q1 and Q4 inspections are difficult or unnecessary in snowy portions of the state when the facilities may be shut down and the baghouses are not in use. (NYCMA)

Response 2-4

Changes were made and the final MSGP (Part II.A.3.a.(3)) requires baghouses to be inspected quarterly during periods of operation or in accordance with manufacturer's recommendations as suggested. The inspection frequency must be documented in the SWPPP.

Comment 2-5 - Part II.A.3

The draft MSGP proposed to change the timing for correcting BMPs from "as expeditiously as practicable" to "immediately." Keep the original language in the 2012 permit. It is not always practical or possible to correct a BMP immediately. Immediate corrections may not even be necessary depending upon their nature. (NYCMA)

Response 2-5

Changes were made and the final MSGP reverted to the original language in GP-0-12-001, which requires maintenance be performed before the next anticipated storm event, or as necessary to maintain the continued effectiveness of stormwater controls. If maintenance prior to the next anticipated storm event is impracticable, maintenance must be scheduled and accomplished as soon as practicable, but not more than 12 weeks after completion of the most recent routine facility inspection or the comprehensive site inspection, unless permission for a later date is granted in writing by the Department All reasonable steps must be taken to prevent or minimize the discharge of pollutants until the final repair or replacement is implemented, including removal of any exposed materials that may be discharged in a storm event .

Comment 2-6 - Part II A.4

Supply a contact/emergency number(s) in the case of a spill or release such as in the EPA 2015 MSGP Section 2.1.2.4. (EPA Region 2)

Response 2-6

No changes were made as the Federal and State emergency numbers are listed in the final MSGP under Additional Reporting (Part VI.A.3.b). This section is referenced in Part II.A.4.a (6) when developing procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies when a spill, leak or other release occurs.

Employee Training

Comment 2-7 - Part II.A.8.d

The employee training subpart states “all personnel with specific responsibilities related to the scope of their job duties….” Provide language to clarify what type of personnel need to be trained in the bulleted items listed in the subpart. (NYCMA)

Response 2-7

The final MSGP clarifies the language to indicate that personnel identified in Part II.A.8.c must be trained in topics (Part II.A.8.d) related to their SWPPP responsibilities.

WQBELs and Impaired Waters

Comment 2-8 – Part II.C

The Draft Permit is wholly inadequate in preventing stormwater pollution from causing or contributing to WQS violations because:

- DEC does not require all dischargers to monitor for the POC causing the impairment;

- The Draft MSGP places no restriction on a permittee's discharge of a pollutant that is causing impairment, unless the pollutant happens to be included in the sectoral benchmarks or effluent limitations that apply to the permittee; and,

- Industrial stormwater contains significant quantities of non-benchmark pollutants not addressed by the draft permit.

DEC must expand the monitoring requirements to include other pollutants and adopt EPA's approach to require all permittees discharging to an impaired water to monitor for the impairing pollutant. (Super Law Group)

Response 2-8

The final MSGP continues to require control measures to address pollutants with a reasonable potential to be present in stormwater discharges associated with industrial activity. The Department is relying on EPA's past efforts, in selection of pollutants with a reasonable potential to be present at levels of concern in stormwater associated with industrial activity. Based on EPA's evaluation and conclusions, which are still applicable, the Department declines to expand the monitoring requirements to include additional parameters as suggested by the commenter.

In 1995[1], after reviewing and analyzing industry monitoring data, EPA established final NPDES MSGP requirements and developed benchmark monitoring requirements for the industry sectors or subsectors that demonstrated a potential to discharge pollutants at concentrations that could potentially impair or contribute to impairing water quality. EPA analyzed the list of potential pollutants against lists of significant materials exposed and industrial activities which occurred within each industry sector or subsector. Where EPA could identify a source of a potential pollutant which was directly related to industrial activities of the industrial sector/subsector, monitoring was required for the industrial sector/subsector in EPA's MSGP. If EPA could not identify a source of a potential pollutant which was associated with the sector/subsector's industrial activity, no additional monitoring was required for that pollutant for the industrial sector/subsector in EPA's MSGP. These benchmarks also represent the level of control achievable by implementation of BMPs.

In the response to comments supporting EPA's 2015 MSGP, EPA reiterated that "the benchmark monitoring requirements in the MSGP are appropriately tailored to the pollutants of concern in each sector and at levels that are appropriately tailored to water quality protection." [2]

[1] 60 Fed Reg. 50,804, 50,827 (Sept 29, 1995).

[2] EPA – Response to Public Comments EPA NPDES 2015 Multi-Sector General Permit, 4 June 2015, p2

The Department acknowledges that EPA has been criticized and challenged for alleged deficiencies in their approach to selecting benchmark parameters. As part of a settlement related to litigation over EPA's 2015 MSGP, EPA is currently reviewing the benchmarks and numeric limits. Specifically:

> EPA agrees to ask the National Research Council to review existing literature and the MSGP's current benchmark monitoring requirements, and evaluate whether there are any improvements to benchmark monitoring to allow EPA to more accurately evaluate the performance of industrial activity-related stormwater control measures [SCMs]. If so, EPA will request that the NRC suggest such improvements, which EPA would consider when developing, in the Next Proposed MSGP, effluent limitations that reflect the best available technology economically achievable ("BAT") or the best conventional technology (`BCT"), as appropriate, and that ensure permitted discharges are controlled as necessary to meet water quality standards.[3]

The Department expects this effort will identify and address any deficiencies that may exist in EPA's approach to selecting benchmark parameters. The Department will consider the outcome of EPA's analysis during the next MSGP renewal. Until that effort is complete, it is premature to make any changes as suggested. Additionally, EPA has not identified any deficiencies in this particular aspect of the final MSGP.

Comment 2-9 – Part II.C

The Draft Permit is inadequate in preventing stormwater pollution from causing or contributing to WQS violations because it relies on benchmarks that are based on acute water quality criteria which were never intended to protect water quality and do not correspond with New York State water quality criteria. DEC must require all permittees discharging to an impaired water to ensure that the discharge of the pollutant for which the water is impaired will meet numeric water quality criterion set forth in 6 NYCRR Part 703 at the point of discharge to the waterbody. (Super Law Group)

Response 2-9

The suggested changes related to setting new numeric limits were not made. The Department disagrees with the assertion that benchmarks were never designed to be protective of water quality. For the most part, the final MSGP's benchmarks reflect the benchmarks that EPA developed in 1995 when promulgating its own MSGP. EPA's record and preamble in that rulemaking make it clear that selected benchmarks were set at levels based upon a number of existing water quality standards or other sources to represent a level above which water quality concerns could arise. Moreover, EPA concluded that storm water discharges with pollutant concentrations occurring below these levels would not warrant further analytical monitoring due to their de minimis potential effect on water quality. 60 Fed Reg. 50,804, 50825 (Sept 29, 1995).

[3] Settlement Agreement, 16Aug2016, p5

EPA reinforced this position in its 2015 MSGP, fact sheet and other supporting documentation stating, “The actual levels selected for the benchmark monitoring thresholds are based on EPA’s CWA section 304(a) recommended water quality criteria (i.e., criteria that EPA has issued and updates from time to time that reflect ambient levels of pollutants that may exist in surface waters while still attaining CWA section 101(a)(2) “fishable/swimmable” uses). Accordingly, the benchmark monitoring requirements in the MSGP are appropriately tailored to the pollutants of concern in each sector and at levels that are appropriately tailored to water quality protection [emphasis added].”[4]

In addition to setting benchmark concentrations that represent water quality criteria applied at end of pipe without dilution, the final MSGP and EPA’s 2015 MSGP require that samples must be collected during worse-case conditions when concentrations are expected to be the highest (collected during first 30 minutes after 3 days of no precipitation to allow for pollutant build up). Also, benchmark cut off concentrations for metals are expressed as total recoverable that considers all possible concentrations of the metal. EPA addressed similar criticism raised during the issuance of EPA’s 2015 MSGP regarding the sufficiency of acute water quality criteria for benchmark monitoring and declined to make changes stating, “In response to comments that the use of acute water quality criteria are not appropriate as benchmark values, and that the benchmark concentrations should make allowances for receiving water characteristics, EPA notes that, in general, freshwater acute criteria, which most of the benchmark concentrations are based on, are less restrictive (i.e., more lax) than chronic water quality criteria. Because of the intermittent nature of stormwater discharges and the elevated flows resulting from precipitation events, EPA views acute criteria as generally more appropriate than chronic criteria in this context. Since benchmarks are usually set equal to acute ambient water quality criteria for the receiving waters, with no allowance for dilution during storm events, EPA agrees with some commenters that they are relatively conservative values (more so because they do not allow for dilution with the receiving water, less so because they are set at acute criteria levels). EPA notes that an exceedance of a benchmark concentration does not necessarily indicate that a discharge is causing or contributing to a water quality standard exceedance, but does provide an indication that there could be a water quality problem. Therefore, benchmark exceedances require an evaluation of control measure effectiveness by the facility, with follow-up corrective action where necessary.”[5]

In issuing its 2015 MSGP, EPA declined to change its approach in response to comments which alleged that the benchmark monitoring requirements did not go far enough and that EPA should include additional numeric limits in their 2015 MSGP. “EPA does not have enough data to support the water quality-based need or technological availability and economic practicability of requiring monitoring for all pollutants likely to be present for each industrial sector or to

[4] EPA – Response to Public Comments EPA NPDES 2015 Multi-Sector General Permit, 4 June 2015, p2
[5] EPA – Response to Public Comments EPA NPDES 2015 Multi-Sector General Permit, 4 June 2015, p7

make other changes suggested by commenters [suggesting changes are needed to the benchmarks]. EPA may reexamine the benchmark monitoring framework in a future MSGP issuance."[6]

As part of a settlement related to litigation over EPA's 2015 MSGP, EPA is currently reviewing the benchmarks and numeric limits. The Department expects this effort will identify and address any deficiencies that may exist in EPA's approach to selecting benchmark and numeric limits. The Department will consider the outcome of EPA's analysis during the next MSGP renewal. Until that effort is complete, it is premature to make any changes as suggested. Additionally, EPA has not identified any deficiencies in this particular aspect of the final MSGP.

Comment 2-10 - Part II.C

To comply with water quality standards in an impaired water, a discharger cannot discharge pollution above the applicable water quality criteria (WQC) because there is no assimilative capacity in the receiving water – it is already impaired. Thus, if the permittee is complying with the benchmark, but the benchmark is higher than the governing WQC, a discharge that meets or approaches benchmarks will still cause or contribute to a violation of WQS. The only feasible way for the Draft Permit to comply with WQSs, and be internally consistent, is to cap discharges into impaired waters at the level of the WQC (unless the permittee seeks and DEC specifically authorizes a higher discharge as being in compliance with a TMDL). DEC must require all permittees discharging to an impaired water to ensure that the discharge of the pollutant for which the water is impaired will meet numeric water quality criterion set forth in 6 NYCRR Part 703 at the point of discharge to the waterbody. (Super Law Group)

Response 2-10

The Department reviewed the All Impaired Waters List[7] and compared the benchmarks to water quality criteria set forth in 6 NYCRR Part 703. The outcome of this effort found the majority of impaired segments do not have a numeric water quality standard associated the impairing pollutant (sediment/TSS, BOD5, COD, N, P, or Biological Impacts (previously Aquatic Toxicity)). In the absence of a numeric water quality standard, the use of benchmark criteria is reasonable and rationale.

The suggestion that dischargers to waters listed as impaired due to Aquatic Toxicity (now listed as Biological Impacts) should be held to the numeric water quality standard for all pollutants due to a lack of assimilative capacity is misplaced. These waterbodies were determined to be impaired due to macroinvertebrate population and diversity. However, no pollutant with a

[6] EPA – Response to Public Comments EPA NPDES 2015 Multi-Sector General Permit, 4 June 2015, p3

[7] The All Impaired Waters List is a searchable, sortable spreadsheet of all impaired waters/pollutants that includes both Section 303(d) List waters as well as Category 4a, 4b, and 4c waters that are impaired but not included on the Section 303(d) List.(http://www.dec.ny.gov/chemical/31290.html). Category 4c waters did not factor into the analysis because these waters do not have a specific pollutant listed as causing the impairment.

numeric water quality standard is specified as causing the impairment. As a conservative measure, the final MSGP continues to require enhanced controls for pollutants reasonably expected to be present in stormwater associated with industrial activity where there is a potential to contribute to the biological impact even though the water is not impaired for the specific pollutant. This requirement goes beyond EPA's 2015 permit which does not require any monitoring when a waterbody's biological communities are impaired but no pollutant is specified as causing the impairment,

The All Impaired Waters List[7] identifies impaired segments for the following pollutants of concern (POC) where the benchmark or numeric limit exceeds the applicable numeric water quality standard: PCBs, Mercury, Ammonia and Copper. For PCBs and Mercury, the MSGP sets numeric effluent limits at the lowest level that can be enforced through monitoring using the most sensitive USEPA approved analytical method (i.e Practical Quantitation Level (PQL)) for PCBs and the MSGP follows the multiple discharge variance for Mercury. For the few (<1%) remaining water body segments listed as impaired where the benchmark or numeric limit may exceed the applicable numeric water quality standard contained in 6 NYCRR Part 703 (i.e. Copper and Ammonia), the Department determined that there are no dischargers in the applicable sectors currently authorized under the MSGP to those impaired segments.

No changes have been made for ammonia impaired segments as the MSGP contains adequate controls to prevent authorization of new dischargers that could cause or contribute to waters with an ammonia impairment. The applicable sectors (Sectors K, L and S) with numeric limits for ammonia would require review under the State Environmental Quality Review Act (SEQRA) and other permits under the Uniform Procedures Act (6 NYCRR Part 621) (UPA permits). New stormwater discharges associated with industrial activity which require any other UPA permits cannot be covered under the final MSGP until the other required permits are obtained. To facilitate the Department's review of a multi-permitted project, an applicant must submit additional information specified in the final MSGP Appendix E. Upon review of this information, the Department may authorize the applicant to submit a Notice of Intent (NOI) to obtain coverage under the MSGP or, alternatively, require an application for an individual SPDES permit. Appendix E – Item 4 requires the owner/operator to provide estimates for Ammonia at all outfalls (see reference to paragraph §40 CFR 122.21.21(g)(7)(iii) and (iv)). This information will be considered by the Department when making the determination as to whether coverage under the MSGP or, alternatively, under an individual permit will be required.

Additional changes have been made to address discharges to Copper impaired waters to ensure the MSGP does not authorize new dischargers that could potentially cause or contribute to the impairment. For copper impaired segments, the final MSGP includes additional non-numeric effluent limits to ensure "no

exposure for copper or copper containing materials" for the applicable Sectors where copper is reasonably expected to be associated with the industrial activity.

Comment 2-11 – Part II.C

DEC takes the position that discharges of stormwater associated with industrial activity are somehow different than other discharges under the CWA and therefore WQBELs are inappropriate for inclusion in the Draft MSGP, DEC is mistaken on the law. The CWA clearly treats stormwater discharges and permits the same as other types of discharges, and therefore stormwater discharges are subject to the same requirements, including WQBELs as other point sources. See CWA § 402(p)(3)(A), § 301(b)(1)(C); 33 U.S.C. § 1342(p)(3)(A), § 1311(b)(1)(C).

The Draft Permit is inadequate in preventing stormwater pollution from causing or contributing to water quality standards violations because DEC does not require stormwater discharges to comply with water quality based effluent limits (WQBELs). DEC cannot rely on the nature of stormwater flows to avoid its legal obligation to implement WQBELs for stormwater discharges to impaired waters. (Super Law Group)

Response 2-11

It is a violation of the New York State Environmental Conservation Law section 17-0501 for any discharge to either cause or contribute to a violation of water quality standards as contained in 6 NYCRR Parts 700 through 705. Therefore, the Department can enforce any violations of water quality standards. Additionally, the final MSGP complies with 6 NYCRR 750-2.1(b) whereby "a determination has been made on the basis of a submitted application, plans, or other available information, that compliance with the specified permit provisions will reasonably protect classified water use and assure compliance with applicable water quality standards."

The final MSGP continues to rely on narrative water quality based effluent limits (WQBELs) contained in Part II.C and has added sector specific non-numeric effluent limits for copper impaired waters to ensure discharges are controlled as necessary to meet applicable water quality standards. If information indicates that discharges are not controlled as necessary to meet applicable water quality standards, the operator must take appropriate corrective action (Part V), document such actions (Part V.C) and provide additional information to the Department. Operators must also implement additional measures (Part II.C.1) or alternatively, apply for an individual permit. Furthermore, the Department may take enforcement action for failure to take the appropriate corrective actions.

The final MSGP requirements for impaired waters are sufficient to ensure new and existing dischargers do not cause or contribute to a water quality standards violation. As noted in response to comment 2-8 & 2-9, sector specific pollutants with benchmark monitoring and numeric limits represent the POC with a

reasonable potential to be present at levels of concern and discharges below these levels represent a de minimis potential effect on water quality. Additional non-numeric effluent limits have been added to ensure copper or copper containing materials or processes are not exposed to precipitation in drainage areas potentially contributing to copper impairments. The enhanced controls of the final MSGP require more frequent monitoring (Part IV.F.1 & 2) and follow up actions (Part V) to ensure discharges to impaired waters remain below these de minimus levels (i.e. benchmark concentrations and numeric limits). Under the final MSGP, all facilities discharging POCs associated with industrial activity with a reasonable potential to contribute to impaired waters must demonstrate that the POC is "not present", "not exposed" or the owner/operator must implement enhanced controls targeted at the POC with increased monitoring to ensure discharges stay below the benchmark or numeric limit.

To ensure that dischargers to impaired waters are at or below the benchmarks and numeric limits, the MSGP requires quarterly monitoring. Part V.B.1 also requires owners/operators to notify the Department if there is an exceedance of a benchmark or numeric limit and provide a summary of actions taken or planned to reduce the discharge to levels below the benchmarks or numeric limits. Continued exceedance of benchmark cut-off concentrations and/or numeric effluent limitations may identify facilities that would be more appropriately covered under an individual SPDES permit. The Department may require any discharger authorized by the MSGP to apply for and/or obtain either an individual SPDES permit or an alternative SPDES general permit in accordance with 6 NYCRR 750-1.21(e). Therefore, the Department expects that compliance with the terms and conditions of the final MSGP will control discharges necessary to meet applicable water quality standards. (See also Response to comments 2-8, 2-9 and 8-5)

Part III – Stormwater Pollution Prevention Plans

General Requirements

Comment 3-1 - Part III

Add an "F" sub-section to the minimum SWPPP requirements in Part III of the draft permit addressing "corrective action documentation" as per the EPA 2015 MSGP Section 4.4. (EPA Region 2)

Response 3-1

Changes were made to address the comment and the final MSGP now includes Part V.C – Corrective Action Documentation. Similar to EPA's 2015 MSGP, the corrective action documentation is not required to be submitted but must be kept with the facility's SWPPP as stated in Part III.A.11 of the final MSGP.

Comment 3-2 - Part III

After "Mined Land Use Plan" add "or any other written plan developed in accordance with a NYSDEC permit." (NYCMA)

Response 3-2

The final MSGP (Part III) allows SWPPP requirements to be fulfilled by incorporating by reference other plans or documents provided that the incorporated plan(s) meet or exceed the SWPPP content requirements of Part III.A and the applicable activity-specific requirements in Part VII. No changes have been made to this text as the list of acceptable plans are given as examples and is not meant to be an exhaustive list.

Potential Pollutant Sources

Comment 3-3 - Part III A.3

The SWPPP should include unauthorized non-stormwater discharges and salt storage under Section III.A.3 – Potential Pollutant Sources, as per the EPA 2015 MSGP Section 5.2.3.4 and 5.2.3.5 respectively. (EPA Region 2)

Response 3-3

The suggested changes are not necessary. The final MSGP (Part III.A.3) requires the SWPPP identify each area at the facility where industrial materials or activities are exposed to stormwater or from which authorized non-stormwater discharges originate. This would include salt storage areas and authorized non-stormwater discharges. Unauthorized non-stormwater discharges must be eliminated. Part III.A.6 requires the location of potential pollutant sources to be shown on the site map like EPA's MSGP Section 5.2.3.5. Part III.A.7.f of the final MSGP includes the documentation requirements for evaluation of non-stormwater discharges like EPA's MSGP Section 5.2.3.4.

Site Map

Comment 3-4 - Part III A.6

Change "Size of property in acres" to "Boundaries of the property and the size of the property in acres" as per the EPA 2015 MSGP Section 5.2.2 Bullet #3 Sub-Bullet #1. (EPA Region 2)

Response 3-3

Changes were made and the final MSGP includes updated site map requirements in Part III.A.6 to include the boundaries of the property in addition to the size in acres as suggested.

SWPPP Preparer

Comment 3-4 - Part III.B.1

Add Professional Geologists and Certified Professionals in Stormwater Water Quality (CPSWQ) to the professionals that can develop SWPPP components that involve the practice of engineering. The duties of a Professional Geologist, as detailed in Chapter 475 Section 7204-a, include professional services of consulting. The CPSWQ is specifically targeted to the design of permanent stormwater controls, which is what the section is referencing. (NYCMA)

Response 3-4

The suggested changes were not made. The final MSGP allows the SWPPP to be prepared by a "qualified person" as defined in the final MSGP. CPSWQs or Professional Geologists may prepare SWPPPs if they possess the knowledge and skills necessary to assess conditions, operations and activities at the facility that could impact stormwater quality and select control measures. However, NYS Education Law (Article 145) requires all components of the SWPPP that involve the practice of engineering be prepared by, or under the direct supervision of a professional engineer licensed to practice in the State of New York.

Comment 3-5 - Part III.B

Move the following paragraph to sector-specific requirements for the appropriate sector:

"Erosion and Sediment Control plans addressing soil disturbance(s) at facilities covered under this permit shall be prepared by, or under the supervision of a trained individual who is knowledgeable in the principles and practices of erosion and sediment control." (NYCMA)

Response 3-5

The suggested change is not necessary. The final MSGP (Part III.B), continues to address the development of erosion and sediment controls, as a general requirement for compliance with Part II.A.5 or to meet sector specific requirements. Under this Part II.A.5, all facilities must stabilize exposed areas and control runoff using structural and/or non-structural *control measures* to *minimize* onsite erosion and sedimentation.

Comment 3-6 - Part III.B.3 SWPPP Preparer

Does the following statement refer to the MSGP or the Construction GP?
"All SWPPPs that require post-construction stormwater management controls shall be prepared by a qualified professional." (NYCMA)

Response 3-6

This statement refers to the MSGP SWPPP but references post construction controls that may be required to manage runoff as required by Part II.A.6 or to meet sector specific requirements. Part II.A.6 requires the owner/operator to divert, infiltrate, reuse, contain or otherwise reduce stormwater runoff to minimize pollutants in the discharges.

Part IV – Inspections and Monitoring

Comprehensive Site Compliance Inspection

Comment 4-1 - Part IV.A.1

It should not be a permit requirement that the Dry Weather Flow Monitoring be conducted at the same time as the Annual Comprehensive Site Compliance

Evaluation. To further tie owner's hands with respect to when inspections are completed is unnecessary, restrictive, and will further complicate the schedule of inspections. (Continental Placer, INC, NYCMA)

Response 4-1

The final MSGP (Part IV.A) removes the restriction placed on the comprehensive site compliance inspection as suggested. Comprehensive site inspections may be conducted at any time and do not need to be preceded by 3 consecutive days with no precipitation. The final MSGP (Part IV.C) provides requirements for conducting an Annual Dry Weather Flow Inspection which may be performed as a separate inspection or as part of the Comprehensive Site Compliance Inspection (Part IV.A) if the Comprehensive Site Compliance Inspection is performed after 3 consecutive days of no precipitation.

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Comment 4-2 - Part IV.A.2.a

The compliance and inspection report documenting the Comprehensive Site Compliance Inspection & Evaluation should include or identify "any evidence of, or the potential for, pollutants entering the drainage system" and "observations regarding the physical condition of and around all outfalls, including any flow dissipation devices, and evidence of pollutants in discharges and/or the receiving water" as additional reporting requirements as per the EPA 2015 MSGP Section 3.1.2 Bullet #4 Sub-bullets #3 and #4. (EPA Region 2)

Response 4-2

Changes were made so that the Compliance Inspection and Evaluation Report in Part IV.A.2.a.5 of the final MSGP includes the suggested inspection and documentation requirements.

Comment 4-3 - Part IV.A.1

Change the inspection frequency from "once per year" to "quarterly" as per EPA's 2015 MSGP Section 3.1 Paragraph #2. (EPA Region 2)

Response 4-3

The suggested change is not necessary. The final MSGP (Part IV.A) requires an annual Comprehensive Site Compliance Inspection along with quarterly Routine Inspections (Part IV.B).

Comment 4-4 - Part IV.A.2.a

In this section add "weather information" at the time of inspection as an additional reporting requirement as per the EPA 2015 MSGP Section 3.1.2 Bullet #3. (EPA Region 2)

Response 4-4

Changes have been made and the final MSGP includes requirements for documenting the weather conditions as part of the Comprehensive Site Compliance Inspection Report as suggested.

Comment 4-5 - Part IV.A.2.a

Provide clarification as to which corrective actions are referenced. (NYCMA)

Response 4-5

This language has been clarified and the final MSGP (Part IV.A.2.a(5)(j)) includes corrective actions to be implemented in accordance with Part V as one of the minimum requirements for the inspection report.

Routine Inspections

Comment 4-6 - Part IV.B.1

Due to the nature and increased frequency of "routine inspections," the term "qualified personnel" should be replaced with something such as "personnel with appropriate knowledge." Requiring that "routine" non-specialized inspections be performed by "qualified personnel" is unnecessary and will place an undue burden on permittees. (NYCMA)

Response 4-6

The suggested changes were not made. Routine inspections are specialized in that the inspection being performed is specific to the industry, the facility and the operations. The person selected to perform these inspections should possess a skill set that includes knowledge of the industry and familiarity with the day-to-day operations of the facility associated with the assigned area. If a person has limited knowledge of the facility's operation, they would not be a good candidate to perform the routine inspections. Additionally, if there are erosion and sediment controls that need to be inspected the person selected to perform the inspections of these controls must be trained in Department endorsed training and keep this training up-to-date by attending additional refresher trainings once every three years.

However, the final MSGP replaces the term "qualified personnel" with "qualified person" and provides the following definition:

> **Qualified Person -** A qualified person may be either a facility employee or hired consultant who is familiar with the day-to-day operations associated with their assigned responsibilities at the facility. The qualified person possesses the knowledge and skills to assess conditions, operations and activities at the facility that could impact stormwater quality and can evaluate the effectiveness of control measures being implemented as part of the requirements of the permit. The owner/operator may designate more than one individual as the qualified person.

If the control measures include Erosion and Sediment controls, then the person selected to inspect the erosion and sediment controls must be knowledgeable in the principles and practices of erosion and sediment control and must receive four (4) hours of Department endorsed training in proper erosion and sediment control principles from a Soil and Water Conservation District, or other Department endorsed entity. After receiving the initial training, the qualified person shall receive four (4) hours of training, every three (3) years.

Note: Inspections of any post-construction stormwater management practices that include structural components, such as a dam for an impoundment, shall be performed by a Qualified Professional.

Comment 4-7 - Part IV.B.1

The draft MSGP required Routine Inspections" be conducted by "qualified personnel" "trained in accordance with Part II.A.8" – There is no reference to "qualified personnel" in this section. Please clarify. (NYCMA)

Response 4-7

Reference to Part II.A.8 has been removed from the Part IV.B.1. The final MSGP (Part IV.B.1) now references a qualified person rather than qualified personnel. A qualified person may be either a facility employee or outside consultant hired by the facility.

Comment 4-8 - Part IV.B.2

Add the additional requirement of inspecting "control measures used to comply with the effluent limits contained in this permit" as per the EPA 2015 MSGP Section 3.1 Paragraph #1 Bullet #5. (EPA Region 2)

Response 4-8

The suggested changes were not necessary as the final MSGP (Part IV.B.2) includes similar language to EPA's 2015 MSGP Section 3.1 that achieves the same goal. The final MSGP requires routine inspections to evaluate the performance of stormwater BMPs described in the SWPPP.

Collection and Analysis of Samples

Comment 4-9 - Part IV.D.1

Part IV.D.1 of the draft MSGP states that samples must be taken from each outfall. However, Part IV.G.3, Representative Outfalls, states that for outfalls that have substantially identical discharges, the discharge of one outfall may be visually monitored/sampled and the data reported as also applying to the substantially identical outfalls. Part IV.D.1 should be modified to incorporate the representative outfall waiver because each outfall is not required to be sampled. As written, these sections contradict one another and will create confusion. (Blymyer Engineers)

Response 4-9

Changes were made and the final MSGP (Part IV.D.1) incorporates the representative outfall waiver as suggested.

Comment 4-10 - Part IV.D.3

Like the current (2012) permit, a “Storm Event Data” form must be recorded in conjunction with quarterly monitoring. This is an unnecessary and time-consuming paperwork burden that provides no benefit with regard to prevention of stormwater pollution. This provision should be deleted. (NYCMA)

Response 4-10

The suggested change was not made. As part of the collection and analysis of samples, storm event data must be recorded to demonstrate the sample was collected during a qualifying storm event. However, the final MSGP no longer requires submission of the form but rather it must be kept with the facility’s SWPPP, and made available to the Department and public for review per Part III.C of the final MSGP.

Comment 4-11 - Part IV.D.4

Discharge from secondary containment systems must be “sampled” upon the first discharge after cleanup. The current permit says the discharge must be “screened.” Sampling may not be required in all cases. Furthermore, waiting for sample results may cause stormwater to accumulate in secondary containment systems, thereby, compromising their ability to contain a spill. Keep the current language that “screening” is required to provide flexibility. (NYCMA)

Response 4-11

Changes were made and the final MSGP (Part IV.D.4) allows screening (rather than sampling) prior to discharge as suggested. However, a representative sample must be collected from the first discharge following any spill or leak and where screening indicates the possibility of contaminated stormwater.

Quarterly Visual Monitoring

Comment 4-12 - Part IV.E.6

In this section include “clarity” as one of the examples within the parentheses for which the inspector should make a visual examination as per the EPA 2015 MSGP Section 3.2.1 Paragraph #2 Bullet #3. (EPA Region 2)

Response 4-12

Changes were made and the final MSGP (Part IV.E.6) includes “clarity” as a visual indicator of potential stormwater pollution requiring corrective action as suggested.

Monitoring Requirements

Comment 4-13 - Part IV.F.2 Frequency

Benchmark monitoring & Numeric Effluent sampling – What is the evidence supporting the need for an increase in sampling frequency? It is already difficult for mining companies to obtain an annual stormwater sample due to the limited operating season. Many mining, ready mix concrete, and black-top facilities are not open during the first quarter and most shut down early in the fourth quarter. For seasonal businesses such as ours, semi-annual sampling is impractical and unnecessary. The annual sampling requirement should be left as it is in the existing MSGP, which is consistent with the annual effluent sampling requirements under the federal stormwater permit. If the semi-annual sampling requirement is to remain, seasonal businesses such as the construction aggregates industries (i.e., mines, ready mix concrete, and hot-mix asphalt) should be exempt due to the aforementioned reasons. (NYCMA, Pratt Industries)

Response 4-13

The suggested changes were not made. An increase in the frequency of Benchmark and Numeric Effluent Limit monitoring and reporting to twice per year will facilitate owner or operator compliance and the Department's administration of the permit. The semi-annual monitoring and reporting contained in the final MSGP represents an appropriate level of oversight to ensure the SWPPP is effectively implemented (See also Response 4-14). With these changes, a separate submission of a Corrective Action Form by July 31st will no longer be necessary to report results of follow-up benchmark monitoring as the semi-annual DMR data will allow the Department to track the effectiveness of any corrective actions taken.

If a facility is inactive for an entire monitoring period, the owner/operator may submit an Inactive/Unstaffed site waiver form. However, if a facility operates during any portion of the monitoring period, a sample must be collected and reported for that reporting period.

Comment 4-14 - Part IV.F.2 – Monitoring Frequency

DEC has improved the permit's monitoring requirement from annually to bi-annually, but this is still short of the quarterly monitoring required by EPA and most other states. As the NRC Report makes clear, collecting samples twice a year, or about ten samples per permit term, is not adequate to characterize most industrial stormwater discharges. NRC Report at 330. DEC should conform its monitoring requirements to those of EPA and most other states and adopt quarterly benchmark monitoring. (Super Law Group)

Response 4-14

The suggested changes were not made. When combined with the other inspection provisions contained in the final MSGP, the semi-annual monitoring and reporting represents a reasonable level of oversight to ensure the SWPPP is effectively implemented without creating an undue hardship on facilities. This

change will also provide more timely information as to the effectiveness of corrective actions. While EPA's 2015 MSGP does require quarterly samples for the first year of coverage, it also allows the covered facility to discontinue monitoring after 4 consecutive results below the benchmarks. This approach provides no analytical feedback on the effectiveness of the implemented controls for the remainder of the permit term.

As part of a settlement related to litigation over EPA's 2015 MSGP, EPA is currently reviewing the extent to which changes in the current MSGP monitoring regime may promote more effective industrial stormwater management including adjusting the frequency of monitoring.

The Department expects this effort will identify and address any deficiencies with respect to monitoring frequency. The Department will consider the outcome of EPA's analysis during the next MSGP renewal. Additionally, through its review of the MSGP drafts, EPA has not identified any deficiencies in this particular aspect of the MSGP.

Comment 4-15 - Part IV.F.2.a

It is recommended that the draft MSGP be revised to state "If permit coverage was effective less than three months from the end of a monitoring period, monitoring begins with the first monitoring period following the effective date of permit coverage." For example, if a facility's permit coverage is effective as of October 2nd, its first monitoring period begins January 1st. (Blymyer Engineers)

Response 4-15

Changes were made as suggested and the final MSGP (Part IV.F.2.a) clarifies that if permit coverage is less than two months, the monitoring period begins with the first monitoring period following the effective date of permit coverage.

Monitoring Waivers

Comment 4-16 - Part IV.G Representative Outfall Waiver

The draft MSGP requires semi-annual monitoring to be reported on Discharge Monitoring Reports (DMRs) per Table IV-1 in Part IV.E. Presumably, Semi-Annual Monitoring replaces the Corrective Action Monitoring in GP-0-12-001. Please clarify whether, under GP-0-17-004, samples from outfalls for which a Representative Outfall Waiver has been claimed must be collected in the 6 months following an exceedance at the Representative Outfall (as is currently required). If so, will eligibility for that waiver be essentially reset at the end of a calendar year as it is now? (WACAP)

Response 4-16

A separate submission of a Corrective Action Form by July 31st, as required under GP-0-12-001, will no longer be necessary to report results of follow-up corrective action monitoring as the semi-annual DMR data will allow the Department to track the effectiveness of any corrective actions taken.

With regard to the Representative Outfall Waiver (Part IV.G.3) when corrective actions are triggered due to monitoring exceedances at an outfall, the representative outfall waiver is suspended for all parameters at all outfalls that were covered by the waiver. These outfalls must then be monitored. In order for the Representative Outfall Waiver to again apply, the owner/operator must submit a new Representative Outfall Waiver Form certifying that the results of two consecutive monitoring periods show that all outfalls have had no exceedances of benchmark monitoring cut-off concentrations; and the owner or operator submits a new Representative Outfall Waiver Form to the Department.

Part V - Corrective Actions

Comment 5-1

Part V requires facilities to implement additional BMPs if corrective actions do not result in achieving benchmark monitoring cut-off concentrations or numeric effluent limitations. Repeated exceedances constitute a violation of the permit. There is no explanation of the number of exceedances that would create a violation. This section needs more clarity. (NYCMA)

Response 5-1

Any exceedance of any Numeric Effluent Limitation is a permit violation. However, benchmark monitoring cut-off concentrations do not represent numeric limits. Exceedance of a benchmark does, however, signal the need to evaluate potential sources of stormwater contaminants and implement corrective actions in accordance with Part V of the final MSGP. Failure to perform corrective actions to address the benchmark exceedance is a violation of the permit. While repeated exceedances of the benchmark do not constitute a violation of the permit, continued exceedance of benchmark cut-off concentrations and/or numeric effluent limitations may identify facilities that would be more appropriately covered under an individual SPDES permit.

Part VI - Reporting and Retention of Records

Comment 6-1 - Part VI.A.1

The draft MSGP proposes to change the annual reporting deadline from February 28th to January 28th of each year following the reporting period. The annual reporting deadline should remain February 28th. There are substantial federal and New York State reporting requirements during the first two months of the year for the mining and associated industries. Most individuals who do the reporting are responsible for multiple permits at multiple facilities. Pushing the reporting requirement up by a month is unnecessary and burdensome to the industry. What is the environmental benefit of moving up the deadline? (NYCMA)

Response 6-1

The suggested change was not made. The Annual Certification Report will be due no later than January 28 of the year following the reporting period. This aligns with the Discharge Monitoring Report due date for Semi-annual monitoring reporting period 2 (July 1 to December 31) and Impaired waters monitoring quarter 4 (October 1st to December 31st) and is consistent with DMR reporting requirements of other SPDES permits. The final MSGP includes provisions for electronic reporting that is expected to improve efficiencies and reduce administrative burdens (i.e. DEC's on-line ACR, net DMR and eNOI).

Comment 6-2 - Part VI.A.3.a

Please restore the language requiring owners or operators to send copies of their Annual Certification Reports (ACRs) and Discharge Monitoring Reports (DMRs) to the MS4 Operator (NYC Law Department)

Response 6-2

The specific change suggested was not made but changes were made to address the comment. The final MSGP requires owner or operators with at least one stormwater discharge associated with industrial activity to an MS4 to submit ACRs or DMRs to the MS4 Operator upon the MS4's request. GP-0-12-001 had required submission of the ACRs and DMRs to the MS4.

Comment 6-3 - Part VI.B

Under the Draft Renewal Permit, DEC must be in receipt of Annual Certification Reports by January 28, and for semi-annual Benchmark Monitoring, results must be received by DEC by July 28. For administrative efficiency, the City requests that the relevant deadlines be changed to January 31st and July 31st, the ends of those months. (NYC Law Department)

Response 6-3

The suggested change was not made and the final MSGP requires DMRs to be received by the Department no later than 28 days after the end of the monitoring period. DMRs for the monitoring period of January 1 to June 30 are due no later than July 28 while DMRs for monitoring period July 1 to December 31 will be due no later than January 28. This is consistent with DMR reporting requirements of other SPDES permits.

Part VII - Sector Specific Requirements

Removal of Sectors AD and AE

Comment 7-1 - Reinstate Sector AD and AE

Comments were received suggesting that NYSDEC should reinstate "Sector AD, "Stormwater Discharges Designated by the Commissioner as Requiring Permits", and Sector AE "Department of Public Works and Highway Maintenance Facilities" to Part VII of the MSGP. (EPA Region 2, Super Law Group, WACAP)

Response 7-1

The final MSGP does not include Sectors AD and AE as requested. These sectors were included in GP-0-12-001 and reserved for industrial facilities whose activities were not specifically listed in 40 CFR 122.26 but where the Department determined it appropriate for permit coverage due to site-specific circumstances (17-0808(2)(d)). Inclusion of these sectors was intended to provide an option for permit coverage. However, a general permit is not appropriate to impose such individualized requirements. For example, although the MSGP is a general permit, the monitoring requirements in each sector are tailored to the specific SIC codes at each facility (See also response to comment 2-8). The monitoring parameters listed in Sectors AD and AE may not be complete or appropriate for the type of facility designated, leaving the possibility that a specific pollutant of concern does not get monitored, or that the facility must go through a futile monitoring exercise because the pollutants being monitored are not associated with the facility that is designated. Removal of Sectors AD and AE from the final MSGP will require those facilities, designated by the Department as needing permit coverage to obtain an individual permit, where appropriate.

The removal of Sectors AD and AE does not change the ability of the Department to require an individual SPDES permit for dischargers, where appropriate. The use of a general permit is a tool that the Department can utilize. If in the future, the Department determines that a category of industrial stormwater discharge outside of the existing SIC codes scheme in the final MSGP is appropriate for inclusion within the MSGP, the Department can propose a modification to the MSGP.

Comment 7-2

The CWA and its implementing regulations contain "anti-backsliding" requirements. The term "anti-backsliding" refers to the Act's prohibitions against the renewal, reissuance, or modifications of an existing NPDES permit that contains effluent limitations, permit conditions, or standards less stringent than those established in the previous permit. Removing sectors AD and AE and their associated benchmarks removes effluent limitations from the permit and makes the conditions of the MSGP less stringent for DPWs, for sources currently in sectors AD and AE, and for the category of yet to be identified polluters that should and would otherwise be covered under these sectors in the future. (Super Law Group)

Response 7-2

Removal of Sectors AD and AE does not constitute backsliding. Here, entire sectors are being removed; there are no changes in the effluent limitations. This is distinguishable from the CWA prohibition of imposing less stringent effluent limitations in permit renewals unless specified exceptions exist. Facilities designated under Sectors AD and AE in previous permit cycles would no longer be covered under the final MSGP, and therefore, would not be subject to less stringent limits under the final MSGP. The Department has evaluated these facilities and determined the appropriate mechanism to control pollutant discharges. This evaluation included consideration of other solutions (i.e. no exposure, current and prospective regulations, other permitting options) taking into consideration anti-backsliding requirements. In those instances, where an individual SPDES permit is necessary, the individual permit will be tailored to the actual discharge, provide better environmental protection, and will be subject to public notice, comment, and possibly a hearing.

Although EPA comments suggested these Sectors be restored in the final MSGP; EPA did not raise the issue of backsliding.

If, in the future, the Department determines a category of industrial stormwater discharge outside of the existing SIC codes scheme is appropriate for inclusion within the MSGP, the Department can propose a modification to the MSGP for that category. There is no requirement that DEC retain a general catch-all sector for use by any point source.

Comment 7-3

EPA identified a great many unregulated industrial sources that do not fit the narrow SIC code based categories that DEC has identified as sectors A through AC, but nonetheless need permit coverage because they are fairly described as industrial and are likely to significantly contribute pollution to waters of the United States. When it developed the federal standards, EPA lacked the data it needed to set national standards to cover all of these unregulated sources itself. EPA expected that states would assist in covering the gap.

EPA expected that the industrial stormwater component of the NPDES program would expand through two basic mechanisms to address facilities found to be a significant contributor of pollutants that did not fit neatly into EPA's narrow, SIC-code based definition of stormwater associated with industrial activity. First, EPA expected that DEC and other state permitting agencies would rely on their residual designation authority under 40 C.F.R. § 122.26(a)(1)(v) and (a)(9)(i)(c) to address industrial facilities not covered by EPA's narrow, SIC-code based definition. Second, EPA made it possible for citizens to petition state permitting agencies to designate polluters not otherwise covered by federal and state regulations for stormwater permit coverage. 40 C.F.R. § 122.26(f) provide for any person to petition DEC to require an NPDES permit for a discharge composed entirely of storm water that contributes to a violation of a water quality

standards or is a significant contributor of pollutants to the waters of the United States. DEC is required to make a final determination on any such petition within 180 days after receiving the petition. AD and AE provide an easy, logical, convenient way of dealing with such sources. (Super Law Group)

Response 7-3

Section 402(p)(5) of the Clean Water Act requires EPA, in consultation with the states, to study and identify those stormwater discharges or classes of stormwater discharges for which permits are not required; determining, to the maximum extent practicable, the nature and extent of pollutants in such discharges; and establishing procedures and methods to control stormwater discharges to the extent necessary to mitigate impacts on water quality. To date, EPA has not identified any new industrial sectors or categories where permit coverage is necessary. Additionally, EPA has not identified any deficiencies in this particular aspect of the MSGP.

Removal of Sectors AD and AE from the final MSGP does not remove or lessen the public's right to petition nor DEC's ability to require a SPDES permit for stormwater discharges that contribute to a water quality standards violation or are found to be a significant contributor of pollutants. This authority is derived from the CWA 40 C.F.R. § 122.26(a)(1)(v) and (a)(9)(i)(c) and ECL section 17-0808 and not the MSGP. The MSGP is simply a vehicle to provide coverage. DEC still can use its residual designation authority to require an individual permit.

Comment 7-4

EPA identified a great many unregulated industrial sources that do not fit the narrow SIC code based categories that DEC has identified as sectors A through AC, but nonetheless need permit coverage because they are fairly described as industrial and are likely to significantly contribute pollution to waters of the United States. When it developed the federal standards, EPA lacked the data it needed to set national standards to cover all of these unregulated sources itself. EPA expected that states would assist in covering the gap. (Super Law Group)

Response 7-4

Section 402(p)(5) of the Clean Water Act requires EPA, in consultation with the states, to study and identify those stormwater discharges or classes of stormwater discharges for which permits are not required; determining, to the maximum extent practicable, the nature and extent of pollutants in such discharges; and establishing procedures and methods to control stormwater discharges to the extent necessary to mitigate impacts on water quality. To date, EPA has not identified any new industrial sectors or categories where permit coverage is necessary. However, as part of a settlement related to litigation over EPA's 2015 MSGP, EPA is currently reviewing the extent to which changes in the current MSGP monitoring regime may promote more effective industrial stormwater management including monitoring by additional sectors not currently subject to such monitoring.

The Department expects this effort will identify and address any deficiencies with respect to industrial sectors needing permit coverage. The Department will consider the outcome of EPA's analysis during the next MSGP renewal. Additionally, EPA has not identified any deficiencies in this particular aspect of the MSGP. In the interim, the Department may use its residual designation authority provided by CWA 40 C.F.R. § 122.26(a)(1)(v) and (a)(9)(i)(c), ECL (17-0808) and 6 NYCRR 750-1.5(a)to designate stormwater discharges on a case-by-case basis. (See also response to comment 2-8)

Comment 7-5

DEC states in the fact sheet supporting this proposed permit that AD and AE are used for just 7 of the 1700 facilities with current coverage under the MSGP. The number of facilities covered under a permit sector is not a valid criterion for inclusion or exclusion in the permit and DEC does not propose using the number of facilities covered to eliminate any other sectors. (Super Law Group)

Response 7-5

The inclusion of number of facilities covered under Sectors AD and AE in the fact sheet accompanying the draft MSGP was not intended to be used as criteria for inclusion or exclusion of facilities designated but rather to indicate the anticipated impacts of the proposed change to the MSGP on regulated entities.

Numeric Effluent Limit sampling timeframes

Comment 7-6

What is the purpose of a 30-day average column in the Numeric Effluent Limitations Tables in Part VII when testing is only required twice per year? (Broome County)

Response 7-6

The Numeric Effluent Limits in the final MSGP are derived from the point source category provisions of the federal regulations (40 CFR Parts 411 to 445) which often specify both a daily maximum and 30-day average. When only one sample is taken the results will be reported for both the daily maximum and the 30-day average concentration of the pollutant. However, additional samples may be taken within the 30-day period and averaged together. This would give a better view of the pollutant load being discharged from the facility. There may be a case where a single sample exceeds the 30-day average and then subsequent samples, averaged together reduce the 30-day average to levels below the limits set in the permit.

Sector A

Comment 7-7

Add to this sector of the NYSDEC draft MSGP the requirements found in EPA's 2015 MSGP Sections 8.A.4.2, "Inventory of Exposed Materials", 8.A.4.3,

"Description of Stormwater Management Controls", and 8.A.5, "Additional Inspection Requirements". (EPA Region 2)

Response 7-7

The suggested changes are not necessary. Language similar to EPA's 2015 MSGP Section 8.A.4.2 can be found in Sector A under *Summary of Potential Pollutant Sources* of the final MSGP. The "Description of Stormwater Management Controls" (EPA MSGP Section 8.A.4.3) is found under Sector A - *Additional Non-Numeric Effluent Limits* of the final MSGP and the "Additional Inspection Requirements" (EPA MSGP Section 8.A.5) can be found under *Sector A – Inspections* of the final MSGP.

Sector C

Comment 7-8

Add to the "Industrial Inorganic Chemicals (SIC 2812-2819)" section the benchmark monitoring requirement for total nitrogen (limit 0.68 mg/L). (EPA Region 2)

Response 7-8

The suggested change was not made. The EPA MSGP 2015 has a benchmark cutoff concentration for nitrate-nitrite of 0.68 mg/L for the Industrial Inorganic Chemicals (SIC 2812-2819) subsector, however there is no benchmark cutoff concentration for Total Nitrogen in the EPA MSGP 2015. The final MSGP uses Total Nitrogen, not just the nitrate-nitrite component of Total Nitrogen.

Sector E

Comment 7-9

Add to this sector the requirement found in EPA's 2015 MSGP Section 8.E.3.2, "Discharge Testing". (EPA Region 2)

Response 7-9

The suggested changes were not necessary. The final MSGP continues to reflect language found in EPA's 2015 MSGP for "Discharge Testing. This language can be found in Sector E under Prohibitions of Non-Stormwater Discharges.

Sector G

Comment 7-10

Add the definition for "Earth disturbing activities" as per the EPA 2015 MSGP Section 8.G.3.2. (EPA Region 2)

Response 7-10

The suggested change is not necessary. The final MSGP continues to use terminology that is commonly used in the mining industry in New York State. The definition of Exploration and Construction phase in Sector G includes language similar to Earth Disturbing Activities referenced in EPA's 2015 MSGP.

Comment 7-11 - Sector G and Sector J

Add language for earth disturbing activities, erosion and sediment controls and site stabilization for Sectors G and J. (EPA Region 2)

Response 7-11

The suggested change is not necessary. The final MSGP requires the design, installation, inspection, maintenance and repair of erosion and sediment controls to conform to the New York Standards and Specifications for Erosion and Sediment Control, (2016). This manual has comprehensive construction phase standards.

Sector J

Comment 7-12

Add to this sector the requirements found at EPA 2015 MSGP Section 8.J.5, "Technology-Based Effluent Limits for Active Mining Activities (EPA Region 2)

Response 7-12

The suggested changes are not necessary. The final MSGP includes technology based effluent limits required in EPA's MSGP 2015. Language comparable to EPA's Section 8.J.5.1 can be found in Part II.A.8 - *Annual employee training* of the final MSGP. Language comparable to EPA's Section 8.J.5.2 can be found in Part II.A.6 – *Management of Runoff* of the final MSGP. Language comparable to EPA's 8.J.5.3 can be found in Part IV - *Inspections and Monitoring* of the final MSGP.

Sector L

Comment 7-13

Are numeric effluent limitations applicable to all landfills? The Numeric Effluent Limitation and Benchmark monitoring cutoff concentrations are confusing in Sector L. (Broome County)

Response 7-13

Numeric effluent limits are only applicable to "contaminated stormwater" defined in the special definitions section in Sector L of the final MSGP as any stormwater that comes in direct contact with landfill wastes, the waste handling and treatment areas or landfill wastewater. At a minimum, the final MSGP requires all landfills to monitor stormwater discharges associated with landfill activities other than contaminated stormwater discharges for the benchmark cutoff concentrations specified in Table VII-L-1 of the final MSGP.

Comment 7-14

Add to this section the federal requirement found at EPA's 2015 MSGP Section 8.L.3.2, "Prohibition Stormwater Discharges from Open Dumps". (EPA Region 2)

Response 7-14

The suggested changes were not made. An ”open dump” is not a type of permitted facility under 6 NYCRR Part 360 and cannot operate under NYSECL section 27-0707.

Sector M

Comment 7-15

Most recyclers (Sector N) don’t accept mercury-containing scrap except in the case of a hazardous waste acceptance event; however, it’s a good idea to have a mercury spill kit available. On the other hand, facilities engaged in auto salvage activities may remove mercury switches from older model end-of-life vehicles, so facilities covered under Sector M should also be required to have mercury spill kits on site. (WACAP)

Response 7-15

Changes were made and the final MSGP includes requirements for Sector M facilities to maintain mercury spill kits on site as suggested.

Sector N

Comment 7-16

Add to this sector the requirements for inspection of waste recycling facilities found in EPA’s 2015 MSGP Section 8.N.5.1, “Inspection Additional Requirements”. (EPA Region 2)

Response 7-16

The suggested changes are not necessary. The final MSGP (Part IV.B) includes requirements for quarterly routine inspections which include all areas of the facility where industrial materials or activities are exposed to precipitation or stormwater runoff. This would include areas where waste is generated, received, stored, treated or disposed of and that are exposed to precipitation as noted in EPA’s 2015 MSGP.

Sector O

Comment 7-17

Add to this sector the federal requirement found at EPA 2015 MSGP Section 8.O.4.4, “Chemical Loading and Unloading”. (EPA Region 2)

Response 7-17

Changes were made and the final MSGP includes the additional best management practices for Chemical Loading and Unloading areas as suggested.

Sector S

Comment 7-18

Add to this sector the federal requirements found at EPA 2015 MSGP:

a. Section 8.S.5.2, “Potential Pollutant Sources”,

b. Section 8.S.5.3, “Vehicle and Equipment Wash Water Requirements”, and
c. Section 8.S.5.4, “Documentation of Control Measures Used for Management of Runoff”. (EPA Region 2)

Response 7-18

The suggested changes were necessary:

e. The final MSGP (Sector S – Summary of Potential Pollutant Sources) includes the suggested BMPs.

f. The final MSGP prohibits the discharges of Vehicle and Equipment wash water. These discharges must be covered by another SPDES permit. Therefore, the additional SWPPP requirements for these discharges have not been added as suggested.

g. The final MSGP (Sector S – Good Housekeeping Measures includes the suggested BMPs.

Sector T

Comment 7-19

Add to this sector the federal requirements for “Wastewater and Wash Water Requirements” found in EPA’s 2015 MSGP Section 8.T.5.3. (EPA Region 2)

Response 7-19

The final MSGP prohibits discharges of Wastewater and Vehicle and Equipment wash water. These discharges must be covered by another SPDES permit. No additional SWPPP requirements for these discharges have been added as suggested.

Part VIII - Appendices

Appendix A - Acronyms and Definitions

Comment 8-1

EPA suggests that NYSDEC add acronyms as found in the EPA MSGP 2015 (EPA Region 2)

Response 8-1

Changes were made and the final MSGP includes acronyms for Best Available Technology Economically Achievable (BAT) and Code of Federal Regulations (CFR) as found in EPA’s 2015 MSGP. Only those EPA suggested acronyms used in the context of the final MSGP were incorporated into Appendix A.

Comment 8-2

The Draft MSGP contains an unlawful definition of “Impaired Water” because it excludes Integrated Reporting Category 4b and 4c waters which are, by

definition, impaired. 4b waters are those impaired because the state has determined that they do not meet applicable water quality standards or support designated used, but in which other required control measures are expected to result in restoration in a reasonable period of time. 4c waters are impaired by unspecified forms of pollution, rather than by a specific pollutant that can be addressed through a TMDL.

The practical effect of removing these waters from the definition of impaired waters appears to be that if polluters discharge to a 4b or 4c water, they (1) are eligible for coverage under this permit but are not required to prevent exposure or minimize the discharge of POCs and (2) are excused from additional quarterly sampling for POCs if they would otherwise be required to monitor the pollutant under [the Sector Specific Requirements].

Sampling for POCs in discharges to 4b and 4c impaired waters is still important regardless of whether a TMDL is going to be developed. First, the sampling information may lead DEC to determine that some industrial dischargers are significant sources of pollution and therefore should be regulated under an individual permit. Second, for 4b waters, even if "other required control measures" are in place, DEC cannot reasonably determine whether those other measures are going to succeed in bringing a waterbody back into compliance if it doesn't know how many other sources of pollution are present and how much pollution those sources are discharging.

DEC must amend its definition of "impaired water" to include 4b and 4c waters by changing the text of the definition provided in Appendix A to read:
"Impaired waters are those waters 1) identified on the 2014 New York Section 303(d) List of Impaired/TMDL Waters, or 2) designated as an Integrated Reporting Category 4a, 4b, or 4c water." (Super Law Group)

Response 8-2

Changes were made and the final MSGP's definition of "impaired waters" includes Category 4b waters (as in GP-0-12-001) but not Category 4c waters. Since there is no POC to target for Category 4c waters, an impairment could not be addressed by a TMDL or permit. The enhanced requirements of the final MSGP will apply to all waters listed on the 2016 New York State Section 303(d) list and where there is a known pollutant of concern (i.e. Category 4a and 4b). Those enhanced requirements include a demonstration that the POC is "not present" or "not exposed" or the owner/operator must implement enhanced controls targeted at the POC (Part III) with increased monitoring (Part IV.F.1.c) and corrective actions (Part V) to ensure discharges stay below the benchmark or numeric limit.

Comment 8-3

Please provide clarification to the definition of "alternative general permit" and include a definition in Appendix A Definitions. (NYCMA)

Response 8-3

Changes were made and the final MSGP defines “alternative SPDES general permit” as meaning a general permit different from the MSGP that covers some or all of the authorized discharges.

Comment 8-4

EPA suggests that NYSDEC add definitions as found in EPA’s 2015 MSGP (EPA Region 2)

Response 8-4

Changes were made and the final MSGP includes definitions for “corrective action” and” run-on” as found in EPA’s 2015 MSGP. Only those terms used in the context of the final MSGP were incorporated into Appendix A.

Appendix E - New Dischargers

Comment 8-5

40 C.F.R. § 122.4(i) specifically prohibits DEC from issuing permit coverage to new dischargers if their operation would cause or contribute to violations of water quality standards (WQSs). EPA complies with this requirement by inserting part 1.1.4.8 into its MSGP, which requires new dischargers to prove up front that either the impairing pollutant is not present, or it is not exposed to stormwater, or that adequate measures are in place to ensure that any water quality criterion for the impairing pollutant will be met at the point of discharge. DEC, in contrast, does not even require new dischargers to an impaired water to test for impairing pollutants once before obtaining permit coverage.

In order to comply with 40 CFR 122.4(i), DEC must follow EPA in making clear to new dischargers that they are not eligible to obtain permit coverage unless they first demonstrate that they will meet numeric criteria at the point of discharge. It is recommended that the Department:

- Modify Appendix E to require all new sources or dischargers to impaired waters to estimate potential discharge for all impairing pollutants before authorizing coverage;

- Render new applicants’ ineligible if applicant estimates that their discharge will exceed a numeric water quality criteria for an impairing pollutant; and,

- Adopt EPA’s language and exclusion in Part 1.1.4.8 of its permit for new discharges to avoid authorizing discharges that cause or contribute to exceedances of WQSs. (Super Law Group)

Response 8-5

The final MSGP requirements for impaired waters are sufficient to ensure new and existing dischargers do not cause or contribute to a water quality standards violation and no changes were made as suggested. Appendix E requires new dischargers to estimate the potential to discharge an impairing pollutant as part of the "additional information". Any facility with new stormwater discharges associated with industrial activity which require other Uniform Procedures Act permit(s) are not initially eligible for coverage under the MSGP. Additional information (listed in Appendix E - Items 1-6) must be submitted to the Department and upon a review, the Department may authorize the applicant to submit a Notice of Intent (NOI) to obtain coverage under the final MSGP or, alternatively, require an application for an individual SPDES permit. Appendix E - Item 5 includes any information on the discharge required under §40 CFR 122.21(g)(7)(iii) and (iv) and Appendix E - Item 6 includes "Other information as the Department may reasonably require to determine whether coverage under this general permit or, alternatively, under an individual permit is required." This would include any information related to the potential for the discharge to cause or contribute to a water quality standards violation to avoid authorizing new discharges that cause or contribute to exceedances of water quality standards. (See also response to comments 2-8, 2-9, 2-10, 2-11)

Appendix H

Comment 8-6 – Permit Action

Add to this part of the draft MSGP the federal Standard Permit Conditions found in EPA's 2015 MSGP Appendix B "Permit Action", B.6. (EPA Region 2)

Response 8-6

The suggested changes are not necessary. The requested permit requirement for EPA's 2015 MSGP Appendix B "Permit Action", B.6, can be found in the final MSGP in Appendix H (see Parts H.1 'Duty to Comply', H.13 'Requiring an Individual Permit or Alternative General Permit' and H.18 'Reopener Clause').

Comment 8-7 - Duty to Provide Information

Under Part H.6 of the Draft Renewal Permit, the owner or operator must provide the NOI, SWPPP and other records within five (5) business days of the owner or operator receiving a written request by any person to review that document. This deadline is not consistent with the timeframe for a copy of the SWPPP to be made available to the public under Part III.C.2.c, which requires the owner or operator to make a copy of the SWPPP available to the public within 14 days of receipt of a written request, subject to specified limitations. The City requests that the fourteen-day timeframe be used in both places, and also that the note concerning the owner or operator's right to withhold confidential information be repeated in Part H.6. (NYC Law Department)

Response 8-7

Changes were made and Part H.6 of the final MSGP no longer includes language concerning the timeframes for providing information to the public. These timeframes can be found in Part III.C.2.c.

Comment 8-8 - Inspection and Entry

The City requests that if DEC takes a sample, a split sample should be made available to the MSGP facility. This is consistent with the EPA's NPDES Compliance Inspection Manual, which recognizes NPDES permittees' right to split samples. See Environmental Protection Agency, NPDES Compliance Inspection Manual at 39. The City further requests that a copy of the chain of custody for that sample be made available to the MSGP facility along with results of any analysis conducted by an ELAP certified laboratory. This would be consistent with ECL 17-0805 which requires that NYSDEC provide to the public any information obtained as a result of "sampling or other investigatory activities of the department." See ECL 17-0805. (NYC Law Department)

Response 8-8

The “SPDES Inspector Guidance Manual for assisting the Division of Water Inspector with SPDES Inspections, NYSDEC, 2008” includes language similar to EPA’s NPDES Compliance Inspection Manual regarding split sampling. At the onset of DEC inspections, it is customary to tell the facility representative if an inspection will include sampling and offer to split samples with the facility. As noted, ECL 17-0805 also requires NYSDEC provide to the public any information obtained as a result of sampling or other investigatory activities of the department. The public, including the MSGP facility, can make a request for information pursuant to this provision.

General Comments on the Permit

Comment GC-1 – Permit Organization

The following text should be placed in the relevant and appropriate sector-specific sections as it is not applicable to all industries:

a. Baghouse inspection and maintenance procedures (Part II.A.3 and Part III.A.7.c(3))

b. Plastic Material Requirements (Part II.A.2)

c. Part I B.1 describes authorized stormwater discharges for Sector J (Mining) and Sector L (Landfills) “for construction activities pursuant to 40 CFR 122.26(b)(14)(x).” (NYCMA)

Response GC-1

a. The final MSGP does not reflect the suggested change. Baghouse inspection and maintenance requirements are included in Part II.A.3 and Part III.a.7.c(3). These requirements are applicable to all facilities that operate a baghouse.

b. The final MSGP does not reflect the suggested change. Plastic Material Requirements are included in the Good Housekeeping section of Part II.A. These requirements apply to any facility that handles pre-production plastics.

c. The final MSGP does not reflect the suggested change. Part I.C.2.c provides eligibility criteria for discharges and activities authorized by the final MSGP. Soils disturbance that would typically require authorization under a separate SPDES general permit for stormwater associated with construction activities associated with Sectors J (Mining) and Sector L (Landfills) are authorized by the final MSGP.

Comment GC-2 – Permit Organization

The DEC states that: "Overall organization and formatting was revised to make the permit read more coherently." For those familiar with the permit and facilities that are currently covered under the permit, reorganization leads to greater, rather than less, confusion. It will also require the review of SWPPPs to update permit references which is an unnecessary and burdensome task. (NYCMA)

Response GC-2

SPDES permits have a maximum duration of 5 years. Control of stormwater is an iterative process with each 5-year renewal expected to include new requirements based on information gained from previous permit cycles. Experience gained over the past 5-year permit term, indicates that, among other things, reorganization of the permit will aid with understanding and compliance with new requirements particularly for new dischargers.

Comment GC-3 – Availability of a strikeout version

Several commenters requested that the draft permit be available in a redline/strikeout version. (NYCMA)

Response GC-3

Due to the numerous changes made to the organization of the draft MSGP, a redline/strikeout version of the final MSGP is not being made available. Rather, the fact sheet developed for the final MSGP provides a summary of changes from GP-0-12-001.

Comment GC-4 - NetDMR

As e-reporting on NetDMR will become mandatory under the 2017 permit, we would like to express our concerns over the roll-out of NetDMR to date. The system is cumbersome to use; does not appear to work correctly as operators

are receiving Notices of Violation even when DMR's are submitted electronically and in hard copy; and passwords expire every 90 days. (NYCMA)

Response GC-4

The Department is shifting to the use of EPA's NetDMR reporting tool to process all DMR forms electronically. This change to the electronic reporting tool is mandated by EPA through the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (40 CFR Parts 9, 122, 123, 124,127, 403, 501, and 503), 80 Fed. Reg. 64064 (October 22, 2015). As a state authorized to administer the NPDES program for EPA, New York must meet the requirements of this regulation. This regulation requires any discharger with an issued permit or covered by a permit submit their DMRs electronically unless they receive a waiver.

NetDMR is an EPA electronic reporting tool that the Department has chosen to use to meet the eReporting requirements. This tool meets the security requirements of electronic reporting mandated by EPA and ensures that the electronic DMRs are submitted by the Responsible Official or their authorized designee. The Department recognizes that account creation is a challenging issue with NetDMR along with the expiration of passwords every 90 days; however, both are necessary to meet legal requirements mandated by EPA for electronic reporting. DEC holds monthly conference calls with EPA and other states to review the performance of NetDMR. EPA uses these conference calls to plan updates to NetDMR and improve its performance. Despite the difficulty in creating accounts and occasional issues with the system, NetDMR provides many advantages over the paper DMR forms. Using NetDMR does improve data accuracy by eliminating DEC hand entry of data; provides quicker access to DMR forms; eliminates lost paper forms during mailing; provides a Copy of Record of submitted DMRs that includes the name of the submitter plus date and time the DMR was submitted; users must acknowledge permit violations, missing data, and other issues before submitting DMRs thereby reducing errors; and electronic storage in NetDMR of Copy or Records and their attachments for a minimum of 6 years.

Comment GC-5 - Regulatory references in the permit

The City recommends that references to other regulation be updated in the permit. (NYC Law Department)

Response GC-5

The final MSGP references the most current regulations.

Comment GC-6 – Transition of monitoring requirements from GP-0-12-001

The permit is scheduled to take effect on 10/1/17. The permit should clarify the applicability of the semi-annual monitoring requirement to the period 10/1/17 to 12/31/17 for facilities that already collected their 2017 annual sample as required by the 2012 permit. The 2017 permit should state that for facilities that collected

their 2017 annual sample prior to the effective date of the permit their first semi-annual monitoring period is 1/1/18 through 6/30/18. (Blymyer Engineers)

Response GC-6

Facilities with effective coverage on September 30, 2017, under GP-0-12-001, continued coverage under the expired MSGP. These facilities were required to collect their 2017 annual sample and will be required to report on February 28, 2018. The first monitoring period under the final MSGP will be from January 1, 2018 to June 30, 2018. The second monitoring period will be from July 1, 2018 to December 31, 2018. The frequency and timing of semi-annual monitoring will continue as stated in Part IV.F.2.

Comment GC-7 – Add a monitoring waiver for no exceedance

A monitoring waiver option should be added for facilities where no exceedance of sampling benchmark exceedances occurs over a set period, such as:

- After four consecutive samples with no benchmark exceedances for a parameter, allow the facility to discontinue sampling for that parameter until a new permit is re-issued in 2022. This could include a requirement for a certification of “Not Present” or “No Exposure” for that parameter; or

- After four consecutive samples with no benchmark exceedances, allow a reduced sampling frequency such as annual sampling instead of two samples per year.

If a monitoring waiver can be obtained after benchmarks have been achieved it will “reward” facilities for their compliance efforts and create another incentive for fully implementing BMPs. (Blymyer Engineers)

Response GC-7

The suggested changes have not been made. An increase in the frequency of Benchmark and Numeric Effluent Limit monitoring and reporting to twice per year will facilitate owner or operator compliance and the Department’s administration of the permit. The semi-annual monitoring and reporting contained in the final MSGP represents an appropriate level of oversight to ensure the SWPPP is effectively administered without creating an undue hardship. This change will also provide more timely information as to the effectiveness of corrective actions.

Commenters

1. Christina Falk (Water Action Compliance Assistance & Planning, LLC (WACAP))
2. EPA Region 2
3. Timothy Tarantino (Pratt Industries)
4. Peter Torre (NYC Law Department)
5. Leslie Boulton, P.E. (Broome County DPW)
6. Edan Rotenberg (Super Law Group)
7. Dave Hamling (NY Construction Materials Association, Inc. (NYCMA))
8. Maryann Ashworth (Continental Placer, Inc.)
9. Robert Yaremko, P.E. (NYCMA)
10. Richard Pecnik (NYCMA)
11. Daniel Meehan (NYCMA)
12. Alexis Drumm (NYCMA)
13. Gib Gagnon (NYCMA)
14. Rosemary Stack (NYCMA/Stack Law Office)
15. Jane Samuelson, P.E. (E. Tetz & Sons/NYCMA)
16. Sue Greenspan (Blymyer Engineers)